

Loan No.:
Loan Amount:

SAMPLE ENERGY COMMISSION LOAN AGREEMENT

This agreement is made and entered into as of the date both parties have signed this agreement, in the State of California by and between the State of California, California Energy Commission, hereinafter "Commission", and _____ hereinafter "Borrower".

1. AUTHORITY

- A. Pursuant to the purposes authorized by the Energy Conservation Act. Section 25410, et seq, of the California Resources Code, the Commission has approved Borrower's loan application dated _____ which is not attached but is expressly incorporated by reference herein.
- B. Subject to the terms, covenants and conditions contained herein, and the attached loan approval request to the extent it modifies Borrower's loan application, the Commission shall make a loan to borrower in the amount of _____ hundred and -00/100 dollars (\$ _____), evidenced by a promissory note loan no. _____ attached hereto as exhibit A.

2. GENERAL TERMS

- A. The Borrower agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to Borrower and to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services materials or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the borrower in the performance of this contract.
- B. The Borrower, and the agents and employees of Borrower, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.
- C. Without the written consent of the Commission, the agreement is not assignable or transferrable by Borrower either in whole or in part.
- D. Time is of the essence in this Agreement.
- E. No alternation or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein, shall be binding on any of the parties hereto.

3. PURPOSE

The Borrower agrees to expend all funds advanced pursuant to this Agreement only for the purposes and in the amounts set forth in the attached budget detail. In the event that the Commission determines that funds have been expended for purposes other than those specified, the full amount of the loan, including principal and interest, shall be immediately due and payable.

4. LOAN DISBURSEMENT SCHEDULE

- A. The Commission agrees to disburse funds to the Borrower upon the proper execution of the attached promissory note and the appropriate security instruments, and required supplemental documents.
- B. Loan funds shall be disbursed based on invoices submitted by Borrower in a form approved by Commission at such times and in such amounts as determined appropriate by Commission in order to accomplish the purpose of the loan.

5. INTEREST

The loan herein shall bear simple interest at the rate set forth in the attached promissory note on the principal balance of loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of repayment of the loan to the Commission and shall accrue from the time of disbursement to the Borrower until receipt of repayment to the Commission.

6. TERM

- A. The effective date of this Agreement shall be the date of its execution by the Commission.
- B. The Borrower agrees to complete performance of its obligations under this Agreement within the period stated in the Borrower's approved loan application.

7. REPAYMENT

All funds advanced hereunder, together with all interest payable thereon, shall be repaid to the Commission in accordance with the Public Resources code Section 25413 no later than the date specified in the promissory note.

8. REPAYMENT

Borrower shall have the right to prepay at any time all or any part of the amount of this loan without penalty.

9. PROMISSORY NOTE

In order to evidence its debt to the Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Commission a Promissory Note.

10. SECURITY (APPLIES ONLY TO NONGOVERNMENTAL BORROWERS)

- A. The Commission may require security for a loan of \$25,000 or more, if required by the Commission:
 - (1) Borrower agrees to execute a Deed of Trust on the property to be improved under the terms of this Agreement to secure the attached Promissory Note, with said Deed of Trust naming the State of California, California Energy Commission as beneficiary; Borrower shall also obtain and deliver a standard CLTA title insurance policy for the secured property, insuring the Commission's interest as lender. (2) Borrower further agrees that, as part of its loan application and at the request of the Commission, it has submitted a current preliminary title report and a current market value appraisal of said property with values supported by available market data which has been prepared by a licensed appraiser.
- B. For all nongovernmental loans the Borrower agrees that in the event that it sells, transfers, mortgages, disposes or further encumbers the said property, or any part thereof, without the prior written consent of the Commission, then the Commission shall have the right, at its option, to declare the entire balance of the unpaid principal with unpaid interest due thereon, immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

11. ACCOUNTS

- A. If requested by the Commission, the Borrower agrees to deposit all funds received under this Agreement in a segregated account in an institution whose deposits are insured by the federal or the state governments.
- B. The Borrower further agrees to establish on its books an energy conservation loan account which shall be maintained as long as the loan obligation remains unsatisfied.
- C. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account.
- D. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.
- E. The Borrower further agrees to allow the Commission or any other agency of the State, on written request, to have reasonable access to and the right of inspecting all records that pertain to said account and agrees to submit to an independent audit if this should be requested by the Commission, at the expense of the Borrower.

F. Borrower further agrees to maintain records showing the cost of the energy saved as a result of implementing the project funded in whole or in part by this loan. At the conclusion of each fiscal year, but not later than October 31, Borrower shall compute and submit to the Commission the cost of the energy saved by implementing the project funded in whole or in part by this loan.

G. All invoices must be submitted within 60 days of project completion.

12. BUDGET

The Borrower acknowledges its obligation to comply with Section 25415, subdivision (b), of the Public Resources Code. Semi-annual payments under this Agreement shall be made from savings in energy costs. If Borrower is a County, City, Town, Township, Board of Education or School District, Borrower agrees that the amount of the semi-annual loan repayment shall not be raised by the levy of additional taxes and shall not be a charge against Borrower's general fund, but shall be obtained solely from actual savings in energy costs resulting from the subject energy conservation projects.

13. DEFAULT

A. In the event the Borrower, for any reason, is unable to proceed with the purpose of this Agreement, the Commission may declare this Agreement to have been breached and be released from any further performance hereunder.

B. In the event of any default or breach of the Agreement by the borrower, the Commission, without limiting any of its other legal rights or remedies, may declare the Promissory Note evidencing the loan to be due and payable.

14. REPORTING

Within ten days after the Commission's written request, the Borrower shall submit a status report on its activities to date pursuant to this Agreement in such a format as determined by the Commission and as often as reasonable required by the Commission.

15. FAIR EMPLOYMENT PRACTICES

The attached Fair Employment Practices Addendum is expressly made a part of this Agreement. Reference to the "the contractor" in the Addendum shall be considered as reference to "the Borrower" under this Agreement.

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PROMISSORY NOTE

1. For value received, the undersigned (hereinafter referred to as the “Borrower”) promises to pay to the order of the State of California, California Energy Commission (hereinafter referred to as the “Commission”), at its principal place of business in Sacramento, California, or at such other place as the Commission may designate, the principal sum of 00/100 dollars (\$) or such lesser amount as shall equal the aggregate amount disbursed to the Borrower by the Commission, together with interest on the unpaid principal computed from the date of each disbursement to the Borrower until repaid by the Borrower at the interest rate of percent (%) per annum, principal and interest to be due and payable in semi-annual installments of dollars (\$) each, beginning on or before December 22 of the fiscal year following the year in which the project is completed and continuing thereafter until said principal and interest have been paid in full.
2. Payment of any installment shall be first applied to accrued interest from the date of disbursal to the Borrower and the balance, if any, to principal. The Borrower may prepay this Note in full or in part, without penalty, but any such prepayment shall be first applied to principal and the balance, if any, to accrued interest.
3. If any installment is not paid within 30 days after its due date, the Commission, at its option may require the Borrower to pay a late charge equal to 5% of the amount of the installment, or \$5, whichever is greater.
4. For non-governmental borrowers of a loan of \$25,000 or more, the indebtedness evidenced by this Note is made pursuant to a loan agreement between the Borrower and the Commission and is secured by meeting the financial requirements approved by the Commission, or a letter of credit or a Deed of Trust.
5. On the occurrence of any event of default, the Commission at its sole election, may declare all or any portion of the principal and accrued interest on this Note to be immediately due and payable and may proceed at once without further notice to enforce this Note according to law.
6. Each of the following occurrences shall constitute an event of default:
 - A. Failure of the Borrower to repay any principal or interest when due under the terms of this Note;
 - B. Termination of said Loan Agreement pursuant to the terms thereof or breach by the Borrower of any terms of said Loan Agreement;
 - C. Failure of the Borrower to undertake in a timely way the express and implied activities for which said Loan Agreement has been executed or a substantial reduction by the Borrower in the scope of said activities;

D. Occurrence of (1) the Borrower's becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower; or (3) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or the similar law or any jurisdiction being authorized or instituted against the Borrower.

7. No delay or failure of Commission in the exercise of any right or remedy hereunder or under any other Agreement, which secures or is related hereto, shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by Commission shall be deemed a waiver of any such right or remedy.
8. Any notice to the Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to the Borrower at the address stated in the Loan Agreement, or to such other address as the Borrower may designate by notice to the Commission. Any notice to the Commission shall be given by mailing such notice by certified mail, return receipt requested, to the Commission at the address stated in the Loan Agreement, or at such other address as may have been designated by notice to the Borrower.
9. If suit is brought to collect this Note, the Commission shall be entitled to collect all reasonable costs and expenses of said suit, including reasonable attorney's fees.
10. This Note shall be binding upon the Borrower and its successors and assigns and upon the Commission and its successors and assigns.
11. This Note shall be construed and enforced in accordance with the laws of the State of California.

NONDISCRIMINATION CLAUSE

1. During the performance of this contract, the recipient, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5) and the regulations or standards adopted by the awarding State agency to implement such article.
3. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
4. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.